

UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Jerrold E. Franklin, Ph.D., Eric S. Mettler,) Art Unit: 2833

Muralidharan P. Arikara, and Lawrence

R. Bawden, Jr.

Serial Nos.: 09/834,390, 09/834,389

Titles: COMPLIANT ELECTRICAL CONTACTS

FOR FUEL CELL USE; INTEGRATED AND MODULAR BSP/MEA MANIFOLD PLATES

FOR FUEL CELLS

(09/834,390 only)

Examiner: Felix Figueroa

(09/834,390 only)

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37 C.F.R. § 1.182 Petition for Appointment of Attorney By Less Than All Applicants

Pursuant to 37 C.F.R. § 1.182 and MPEP § 402.10, applicants Jerrold E. Franklin, Ph.D. and Eric S. Mettler ("Franklin and Mettler") hereby submit this petition seeking the appointment of Daniel P. Maguire (Reg. No. 41,506) as their representative in the abovereferenced applications (the "Applications").

Factual Background

There are four inventors named for the Applications: Jerrold E. Franklin, Ph.D., Eric S. Mettler, Muralidharan P. Arikara, and Lawrence R. Bawden, Jr. Franklin & Mettler *Decl.*, \P 1. When the Applications were filed, the four inventors were commonly employed by a company named PowerTek International "(PowerTek"), and they had no apparent internal conflict or divergence of interests. Franklin & Mettler Decl., ¶ 2. Through PowerTek, Howard M. Peters was appointed as the attorney for the Applications, and Mr. Peters represented the four inventors jointly. *Franklin & Mettler* Decl., ¶ 2. The inventors did not assign their patent rights to PowerTek. Franklin & *Mettler Decl.,* ¶ 2.

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^{&#}x27;The "Franklin and Mettler Decl." is the Declaration of Jerrold Franklin and Eric Mettler in Support of Petition for Separate Counsel," filed herewith.

However, during summer, 2001 PowerTek started to cease operations, and each of the four inventors terminated their employment with PowerTek shortly thereafter. Franklin & Mettler Decl., ¶¶ 3, 4. As PowerTek was winding down its business, the four inventors discussed their future plans, and tentatively agreed to form a new company together. Franklin & Mettler Decl., ¶ 3. But immediately after they left PowerTek, Muralidharan P. Arikara and Lawrence R. Bawden, Jr. ("Arikara and Bawden") individually informed Franklin and Mettler that they did not want proceed with the new company, and planned to go their separate ways and each would seek independent employment. Franklin & Mettler Decl., ¶ 5. Subsequently, Arikara and Bawden then formed their own new company, known as Jadoo Systems ("Jadoo"). Franklin & Mettler Decl., ¶ 6. Franklin and Mettler also formed their own new company, known as Altergy Systems ("Altergy"). Franklin & Mettler Decl., ¶ 6.

The two new companies, Jadoo and Altergy, are both working on fuel cell technology, which is the general subject matter of the Applications. *Franklin & Mettler Decl.*, \P 7. It is quite likely that Jadoo and Altergy will be business competitors, and are certainly not working collaboratively any longer. *Franklin & Mettler Decl.*, \P 7.

Recognizing the conflict of interest, the representative for the four inventors, Howard Peters, is seeking to withdraw from representation on the Applications with the consent of Franklin and Mettler. *Franklin & Mettler Decl.*, ¶ 8.

The Need for Separate Counsel

Because the four inventors are no longer working as a team and are in fact business competitors, there are "good and sufficient reasons" why they should have their own legal representatives. MPEP 402.10. No single person could adequately represent all four inventors, because of their divergent interests. See 37 C.F.R. § 10.66.²

² Moreover, Franklin and Mettler would not consent to sharing a lawyer with the other two inventors, even if the rules allowed it. 37 C.F.R. § 10.66(c).

The parties' former representative, Howard Peters, has recognized the conflict and is seeking to withdraw with the consent of Franklin and Mettler. *Franklin & Mettler Decl.*, ¶ 8.

The MPEP recognizes that in certain cases a subset of inventors may appoint counsel representing only them, and not the other inventors. MPEP § 402.10. The present case is a classic situation justifying separate representation, since the four inventors have parted ways and started competing ventures. Franklin and Mettler want and have a right to their own counsel, and submit that the inability of any single person to represent all four inventors constitutes good and sufficient grounds to grant the present petition.

Therefore, Franklin and Mettler respectfully request that the USPTO accept the attached Revocation and Power of Attorney, appointing Daniel P. Maguire as their representative in the Applications.

Dated: February 5 2002

By: Daniel P Mogn

Daniel P. Maguire (Reg. No. 41,506) Tel: (530) 750-3661

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OFFICE OF PETITIONS







423 E STREET DAVIS, CALIFORNIA 95616

(530) 750 - 3661 FAX: (530) 750-3793 e-mail: dpm@danmaguire.com

February 6, 2002

Assistant Commissioner for Patents **Box DAC** Washington, D.C. 20231

Re: U.S. Applications 09/834,389 ("Integrated & Modular BSP/MEA Manifold Plates for Fuel Cells, filed 4/13/01) and 09/834,390 ("Compliant Electrical Contacts for Fuel Cell Use," filed 4/13/01)

Art Unit: 2833 (09/834,390 only) Examiner: Felix Figueroa (09/834,390 only)

Dear Sir or Madam:

Pursuant to 37 C.F.R. § 1.182, please find the following papers relating to the abovereferenced applications:

- Revocation of Power of Attorney and New Power of Attorney;
- Declaration of Jerrold Franklin and Eric Mettler in Support of Petition for Separate Counsel;
- Petition for Appointment of Attorney by Less Than All Applicants;
- Check for \$ 130.00; and

Acknowledgment Postcard.

Sincerely,

Daniel P. Maguire

PECENEL TO 1700 Certification under 37 § C.F.R. § 1.8

I hereby certify that this transmittal letter and all the documents referred to as enclosed therein are being transmitted by U.S. mail to Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231 on February 6, 2002.

Enclosures

cc: Client

Muralidharan Arikara (w/encl.) Lawrence Bawden (w/encl.)

REVOCATION OF POWER OF ATTORNEY AND NEW POWER OF ATTORNEY

	Application Nos.	09/834,389; 09/834,390
Į,	Filing Dates:	April 13, 2001; (both applications)
	First Named Inventor:	Jerrold E. Franklin, Ph.D.
	Group Art Unit	2833 (09,834,390 only at present)
	Examiner Name	Felix Figueroa (09,834,390 only at present)
	Titles:	Integrated and Modular BSP/MEA Manifold Plates for Fuel Cells; Compliant Electrical Contacts for Fuel Cell Use;

We hereby revoke all previous powers of attorney or authorizations of agent given in the above-identified applications, and we hereby appoint the practitioner named below as our attorney to prosecute the applications identified above, and to transact all business in the United States Patent and Trademark Office connected therewith. Please note that this appointment is made on behalf only of two of the four inventors named in the present applications, namely Jerrold E. Franklin, Ph.D. and Eric S. Mettler. A 37 C.F.R. § 1.182 petition is being filed in connection with this appointment.

Please change the correspondence address for the above-identified applications so that all correspondence for inventors Franklin and Mettler is sent to the practitioner identified below.

Name	Daniel P. Maguire	Reg.	No.	41,506	-	
Address	423 E Street					
Address						
City	Davis		State	California	Zip	95616
Telephone	(530) 750-3661		Fax	(530) 750-3	793	

We are:	X	Applicants/Inventors	
		Assignee of Record of the Entire Interest (37 CFR 3.73(b) statement enclosed)	

SIGNATURES OF APPOINTING APPLICANTS

Name:	Jerrold E. Franklin, Ph.D.	ORIGINAL PAPE
Signature:	Ant Jull	A VALLA PERS
Date:	1/25/02	FED CEIL
Name:	Eric S. Mettler	C , 26 2002 CD
Signature:	at motto	700
Date:	1-25-02	

Note: Signatures of all the inventors or assignees of record of the entire interest or their representatives are required. Submit multiple forms if more than one signature is required.

Total of 1 form is submitted



UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:

Jerrold E. Franklin, Ph.D., Eric S. Mettler,

Muralidharan P. Arikara, and Lawrence

R. Bawden, Jr.

Serial Nos.: 09/834,389; 09/834,390

Titles: INTEGRATED AND MODULAR BSP/MEA MANIFOLD PLATES FOR FUEL CELLS: COMPLIANT ELECTRICAL CONTACTS

FOR FUEL CELL USE

Art Unit: 2833

(09/834,390 only)

Examiner: Felix Figueroa

(09/834,390 only)

Declaration of Jerrold Franklin and Eric Mettler In Support of Petition for Separate Counsel

We, Jerrold E. Franklin and Eric S. Mettler, make this declaration of our own personal knowledge, and each of us could and would competently testify to these matters if called upon to do so:

- 1. We are named co-inventors in the above-captioned United States patent applications (the "Applications"), along with Muralidharan P. Arikara and Lawrence R. Bawden. ("Arikara and Bawden"). The general subject matter of the Applications is fuel cell technology. The Applications were both filed on April 13, 2001. These applications claim priority from provisional applications filed on November 17, 2000 (Ser. No. 60/249,662) and August 18, 2000 (Ser. No. 60/226,471).
- 2. When the Applications were filed, we were both employed by PowerTek International ("PowerTek"), as were Arikara and Bawden. There was no apparent conflict or divergence of interest between or among the four of us at that time. Therefore, through PowerTek, we had patent attorney Howard Peters, who handled our provisional patent applications, jointly represent all of us with regard to the Applications. Neither the Applications nor the subject matter underlying them were assigned to PowerTek.
- 3. However, during summer, 2001 PowerTek started to cease operations. As PowerTek was winding down its business, we had discussions with Arikara and Bawden concerning what each of us would do after leaving PowerTek. The four of us tentatively agreed

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that after we left PowerTek we would work together and form a new company to capitalize on the fuel cell technology that we had been working on.

- 4. As of approximately September 21, 2001, PowerTek was no longer operating, and as of October 19, 2001, the four of us were no longer employed by PowerTek.
- 5. Immediately after we all terminated our employment with PowerTek, Arikara and Bawden informed us that they did not want go forward with the planned new venture, and that they planned to go their separate ways and seek independent employment.
- 6. Arikara and Bawden then formed their own new company, known as Jadoo Systems, LLC ("Jadoo"). We have also formed our own new company, known as Altergy Systems ("Altergy").
- 7. Our new company is working with fuel cell technology, including technology that would likely be covered by the Applications once they mature into patents. We also understand that Arikara and Bawden's new company, Jadoo, is working on fuel cell technology, and therefore it appears quite likely that the two companies will be business competitors. The companies certainly are not working collaboratively.
- 8. Howard Peters, the lawyer who had represented the four of us with regard to the Applications, is in the process of withdrawing from these matters with our permission. (See Exh. A hereto, Peters' Withdrawal Papers). We want our own counsel, to represent us separately from Arikara and Bawden. We do not believe it would be possible for us to jointly share a lawyer with Arikara and Bawden, given the plain conflict of interest between us and them.

We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Jerrold E. Franklin, Ph.D.

Executed this 31th day of January, 2002

Eric S. Mettler

Executed this 31 th day of January, 2002

PINE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of) Group Art Unit: 2833
Jerrold E. Franklin, Eric S. Mettler)
Muralidharan P. Arikara, Lawrence R. Bawden, Jr.)
) Examiner:
Serial No. 09/834,390) Felix O. Figueroa
Filed: April 13, 2001) Alchara
For: COMPLIANT ELECTRICAL CONTACTS FOR FUEL CELL USE	BECK!
Assistant Commissioner for Patents	
Washington, D.C. 20231	
Attention: Manager, Group Art Unit 2833	
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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on January _____, 2002.

Howard M. Peters (Reg. No. 29,202)

POWER OF ATTORNEY BY INVENTOR(S) (REVOCATION OF PRIOR POWERS)

Sir:

As a named inventor for the above identified

[X] application,

[] patent

REVOCATION OF PRIOR POWERS OF ATTORNEY

I hereby revoke all powers of attorney previously given for the application above and those listed below of which I am listed as an inventor and retain the power.

[X] listed inventors (4)

(PRIOR DESIGNATED MAIN CONTACT)

DR. JERROLD E. FRANKLIN 2709 STOUGHTON WAY SACRAMENTO, CA 95827 TEL. NO.: 1-916-362-4730

Mr. Muralidharan P. Arikara 1009 Carter Street Folsom, CA 95630 Mr. Eric S. Mettler 2375 Knollwood Drive Cameron Park, CA 95682 Tel. No.: 1-916-996-2468

Mr. Lawrence R. Bawden, Jr. 3720 Devon Court El Dorado Hills, CA 95762

NEW POWER OF ATTORNEY

We will shortly appoint attorney(s) and/or agent(s) to prosecute and transact all business in the Patent and Trademark Office connected therewith.

RELATED APPLICATIONS - REVOKE ALSO

Application Serial Number	Group	Status of Withdrawal request
Signature(s) of the attorney(s)	OF ATTORNEY(S) Is being revoked (or sign	BEING REVOKED gnature of an authorized attorney on
behalf of an attorney withdrawing)		
	Signat	ture of revoked practitioner(s)
Howard M. Peters, Reg. No. 29,202		
Hana Verny, Reg. No. 30,518		
Allston Jones, Reg. No. 27,906		
Janis Bikša, Reg. No. 34,427		
Susan M. Schmitt, Reg. No. 34,427		
(All with Peters, Verny, Jones and B	ikša, LLP - and follov	wing)

POWER OF ATTORNEY BY INVENTOR(S) SIGNATURE(S) OF INVENTOR(S)

Signature(s) of the inventor(s) and post office address.

Date: 1/25/02	Signature of inventor Dr Jerrold E. Franklin (type or print inventor kname)
	2709 Stoughton Way, Sacramento, CA 95827 Post Office Address
Date: /- 25-02	Mr. Eric S. Mettler (type of politicity entor & heric)
	Inventor's signature 2375 Knollwood Drive, Cameron Park, CA 95682
Date:	Post Office Address Mr. Muralidharan P. Arikara (type or print inventor's name)
	Inventor's signature
	1009 Carter Street, Folsom, CA 95630 Post Office Address
Date:	Mr. Lawrence R. Bawden, Jr. (type or print inventor's name)
	Inventor's signature 3720 Devon Court, El Dorado Hills, CA 95762
	Post Office Address

If additional fees are required for the filing of this document, the Commissioner of hereby authorized to charge or credit an overpayment to Deposit Account No. 16-1331.

Respectfully submitted,

Dated: January , 2002

Howard M. Peters (Reg. No. 29,202)
Attorney for Applicant
PETERS, VERNY, JONES & SCHMITT, LLP
(formerly PETERS, VERNY, JONES & BIKŠA, LLP)
385 Sherman Avenue, Suite 6
Palo Alto, CA 94306

Telephone: (650) 324-1677 Facsimile: (650) 324 1678 Attorney Docket No.: 3737.01-1

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N THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the	Application of)
) Group Art Unit:
Invent	tor(s) Name: Jerrold E. Franklin)
	Eric S. Mettler) Examiner:
	Muralidharan P. Arikara)
	Lawrence R. Bawden, Jr.	
U.S. Serial No.: 09/834,389))
Filed: April 13, 2001		
Title:	INTEGRATED AND MODULAR	
110201	BSP/MEA/MANIFOLD PLATES FOR) FB
	FUEL CELLS	
Assist	ant Commissioner for Patents	
Wash	ington, D.C. 20231	
Attent	tion: Manager, Group Art Unit 2833	90

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I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on January ____, 2002.

Howard M. Peters (Reg. No. 29,202)

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As a named inventor for the above identified

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[] patent

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I hereby revoke all powers of attorney previously given for the application above and those listed below of which I am listed as an inventor and retain the power.

[X] listed inventors (4)

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Mr. Muralidharan P. Arikara 1009 Carter Street Folsom, CA 95630 Mr. Eric S. Mettler 2375 Knollwood Drive Cameron Park, CA 95682 Tel. No.: 1-916-996-2468

Mr. Lawrence R. Bawden, Jr. 3720 Devon Court El Dorado Hills, CA 95762

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Application Serial Number	Group		Status of Withdrawal request	
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SIGNATURE(S) OF Signature(s) of the attorney(s) b				
behalf of an attorney withdrawing)	vg	(• • • • • • • • • • • • • • • • • • •	
		Signature of revok	ed practitioner(s)	
Howard M. Peters, Reg. No. 29,202				
Hana Verny, Reg. No. 30,518		-		
Allston Jones, Reg. No. 27,906				
Janis Bikša, Reg. No. 34,427				
Susan M. Schmitt, Reg. No. 34,427				
(All with Peters, Verny, Jones and Bikš	ia, LLP - and	l following)		

POWER OF ATTORNEY BY INVENTOR(S) SIGNATURE(S) OF INVENTOR(S)

Signature(s) of the inventor(s) and post office address.

Date: 1/25/02	Signature of inventor Du. Jerrold E. Frankfin (type disprint inventor's state) Inventor's signature 2709 Stoughton Way, Sacramento, CA 95827 Post Office Address
Date: /-25-02	Mr. Eric S. Mettler (type of print inventor's none) Inventor's signature 2375 Knollwood Drive, Cameron Park, CA 95682 Post Office Address
Date:	Mr. Muralidharan P. Arikara (type or print inventor's name) Inventor's signature
	1009 Carter Street, Folsom, CA 95630 Post Office Address
Date:	Mr. Lawrence R. Bawden, Jr. (type or print inventor's name)
•	Inventor's signature 3720 Devon Court, El Dorado Hills, CA 95762 Post Office Address

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Respectfully submitted,

Dated: January , 2002

Howard M. Peters (Reg. No. 29,202) Attorney for Applicant PETERS, VERNY, JONES & SCHMITT, LLP (formerly PETERS, VERNY, JONES & BIKŠA, LLP) 385 Sherman Avenue, Suite 6 Palo Alto, CA 94306

Telephone: (650) 324-1677 Facsimile: (650) 324-1678 Attorney Docket No.: 3737.02-1

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